AMENDMENTS TO HEALTH INSURANCE
COVERAGE IN STATE CONTRACTS
2010 GENERAL SESSION
STATE OF UTAH
LONG TITLE
General Description:
This bill amends provisions related to the requirement that contractors with certain state
entities must provide qualified health insurance to their employees and the dependents
of the employees who work or reside in the state.
Highlighted Provisions:
This bill:
• clarifies the application of a waiting period for health insurance may not exceed the
first of the month following 90 days of the date of hire;
• clarifies that the qualified health insurance coverage must be offered to employees
and dependents who work or reside in the state;
• clarifies that the qualified health insurance coverage that must be offered is a
minimum standard and an employer may offer greater coverage;
• amends the definition of qualified health insurance coverage to clarify the standards
 amends the enforcement provisions to provide protections for good faith
compliance; and
• clarifies how an employer offering a defined contribution arrangement may comply
with state contract requirements.
Monies Appropriated in this Bill:
None
Other Special Clauses:
None
Utah Code Sections Affected:
AMENDS:
17B-2a-818.5, as enacted by Laws of Utah 2009, Chapter 13
19-1-206 , as enacted by Laws of Utah 2009, Chapter 13

63A-5-205 , as last amended by Laws of Utah 2009, Chapter 13
63C-9-403, as enacted by Laws of Utah 2009, Chapter 13
72-6-107.5 , as enacted by Laws of Utah 2009, Chapter 13
79-2-404 , as enacted by Laws of Utah 2009, Chapter 13
ENACTS:
31A-30-209 , Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:
Section 1. Section 17B-2a-818.5 is amended to read:
17B-2a-818.5. Contracting powers of public transit districts Health insurance
coverage.
(1) For purposes of this section:
(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
34A-2-104 who:
(i) works at least 30 hours per calendar week; and
(ii) meets employer eligibility waiting requirements for health care insurance which
may not exceed the first day of the calendar month following 90 days from the date of hire.
(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
the contract is entered into or renewed:
[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
determined by the Children's Health Insurance Program under Section 26-40-106; and]
[(B) under which the employer pays at least 50% of the premium for the employee and
the dependents of the employee;]
[(ii) (A) is a federally qualified high deductible health plan that has:]
[(I) the lowest deductible permitted for a federally qualified high deductible health
plan; and]
[(II) an out of pocket maximum that does not exceed three times the amount of the
annual deductible; and]
[(B) under which the employer pays 75% of the premium for the employee and the
dependents of the employee; or]

(2	[(::) (A)
63	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
64	determined under Subsection (1)(c)(i); and]
65	[(B) under which the employer pays at least 75% of the premium of the employee and
66	the dependents of the employee.]
67	(i) a health benefit plan and employer contribution level with a combined actuarial
68	value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
69	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
70	a contribution level of 50% of the premium for the employee and the dependents of the
71	employee who reside or work in the state, in which:
72	(A) the employer pays at least 50% of the premium for the employee and the
73	dependents of the employee who reside or work in the state; and
74	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
75	(I) rather than the deductible and out of pocket maximum based on income levels, the
76	deductible is \$750 and the out of pocket maximum is \$2,000;
77	(II) dental coverage is not required; and
78	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
79	apply; or
80	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
81	deductible that is either:
82	(I) the lowest deductible permitted for a federally qualified high deductible health plan;
83	<u>or</u>
84	(II) a deductible that is higher than the lowest deductible permitted for a federally
85	qualified high deductible health plan, but includes an employer contribution to a health savings
86	account in a dollar amount at least equal to the dollar amount difference between the lowest
87	deductible permitted for a federally qualified high deductible plan and the deductible for the
88	employer offered federally qualified high deductible plan; and
89	(B) an out of pocket maximum that does not exceed three times the amount of the
90	annual deductible; and
91	(C) under which the employer pays 75% of the premium for the employee and the
92	dependents of the employee who work or reside in the state.
93	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208

94 (2) Except as provided in Subsection (3), this section applies to all contracts entered 95 into by the public transit district on or after July 1, 2009, if: 96 (a) the contract is for design or construction; and 97 (b) (i) the prime contract is in the amount of \$1.500,000 or greater; or 98 (ii) a subcontract is in the amount of \$750,000 or greater. 99 (3) This section does not apply if: 100 (a) the application of this section jeopardizes the receipt of federal funds; 101 (b) the contract is a sole source contract; or 102 (c) the contract is an emergency procurement. 103 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102. 104 or a modification to a contract, when the contract does not meet the initial threshold required 105 by Subsection (2). 106 (b) A person who intentionally uses change orders or contract modifications to 107 circumvent the requirements of Subsection (2) is guilty of an infraction. 108 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit 109 district that the contractor has and will maintain an offer of qualified health insurance coverage 110 for the contractor's employees and the employee's dependents during the duration of the 111 contract. 112 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor 113 shall demonstrate to the public transit district that the subcontractor has and will maintain an 114 offer of qualified health insurance coverage for the subcontractor's employees and the 115 employee's dependents during the duration of the contract. 116 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with [administrative rules] an 117 118 ordinance adopted by the public transit district under Subsection (6). 119 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the 120 requirements of Subsection (5)(b).

ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

the duration of the contract is subject to penalties in accordance with [administrative rules] an

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125	requirements of Subsection (5)(a).
126	(6) The public transit district shall adopt [administrative rules] ordinances:
127	[(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]
128	[(b)] (a) in coordination with:
129	(i) the Department of Environmental Quality in accordance with Section 19-1-206;
130	(ii) the Department of Natural Resources in accordance with Section 79-2-404;
131	(iii) the State Building Board in accordance with Section 63A-5-205;
132	(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
133	(v) the Department of Transportation in accordance with Section 72-6-107.5; and
134	[(vi) the Legislature's Administrative Rules Review Committee; and]
135	[(c)] <u>(b)</u> which establish:
136	(i) the requirements and procedures a contractor must follow to demonstrate to the
137	public transit district compliance with this section which shall include:
138	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
139	(b) more than twice in any 12-month period; and
140	(B) that the actuarially equivalent determination required in Subsection (1) is met by
141	the contractor if the contractor provides the department or division with a written statement of
142	actuarial equivalency from either:
143	(I) the Utah Insurance Department; [or]
144	(II) an actuary selected by the contractor or the contractor's insurer; [and] or
145	(III) an underwriter who is responsible for developing the employer group's premium
146	rates;
147	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
148	violates the provisions of this section, which may include:
149	(A) a three-month suspension of the contractor or subcontractor from entering into
150	future contracts with the public transit district upon the first violation;
151	(B) a six-month suspension of the contractor or subcontractor from entering into future
152	contracts with the public transit district upon the second violation;
153	(C) an action for debarment of the contractor or subcontractor in accordance with
154	Section 63G-6-804 upon the third or subsequent violation; and
155	(D) monetary penalties which may not exceed 50% of the amount necessary to

156	purchase qualified health insurance coverage for employees and dependents of employees of
157	the contractor or subcontractor who were not offered qualified health insurance coverage
158	during the duration of the contract[-]; and
159	(iii) a website on which the district shall post the benchmark for the qualified health
160	insurance coverage identified in Subsection (1)(c)(i).
161	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
162	subcontractor who intentionally violates the provisions of this section shall be liable to the
163	employee for health care costs [not covered by insurance.] that would have been covered by
164	qualified health insurance coverage.
165	(ii) An employer has an affirmative defense to a cause of action under Subsection
166	(7)(a) if the employer:
167	(A) relied in good faith on a written statement of actuarial equivalency provided by an
168	actuary; or
169	(B) if a department or division determines that compliance with this section is not
170	required under the provisions of Subsections (3) or (4).
171	(b) An employee has a private right of action only against the employee's employer to
172	enforce the provisions of this Subsection (7).
173	(8) Any penalties imposed and collected under this section shall be deposited into the
174	Medicaid Restricted Account created in Section 26-18-402.
175	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
176	<u>coverage</u> as required by this section:
177	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
178	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
179	Legal and Contractual Remedies; and
180	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
181	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
182	or construction.
183	Section 2. Section 19-1-206 is amended to read:
184	19-1-206. Contracting powers of department Health insurance coverage.
185	(1) For purposes of this section:
186	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section

187	34A-2-104 who:
188	(i) works at least 30 hours per calendar week; and
189	(ii) meets employer eligibility waiting requirements for health care insurance which
190	may not exceed the first day of the calendar month following 90 days from the date of hire.
191	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
192	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
193	the contract is entered into or renewed:
194	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
195	determined by the Children's Health Insurance Program under Section 26-40-106; and]
196	[(B) under which the employer pays at least 50% of the premium for the employee and
197	the dependents of the employee;]
198	[(ii) (A) is a federally qualified high deductible health plan that has:]
199	[(I) the lowest deductible permitted for a federally qualified high deductible health
200	plan; and]
201	[(II) an out of pocket maximum that does not exceed three times the amount of the
202	annual deductible; and]
203	[(B) under which the employer pays 75% of the premium for the employee and the
204	dependents of the employee; or]
205	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
206	determined under Subsection (1)(c)(i); and]
207	[(B) under which the employer pays at least 75% of the premium of the employee and
208	the dependents of the employee.]
209	(i) a health benefit plan and employer contribution level with a combined actuarial
210	value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
211	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
212	a contribution level of 50% of the premium for the employee and the dependents of the
213	employee who reside or work in the state, in which:
214	(A) the employer pays at least 50% of the premium for the employee and the
215	dependents of the employee who reside or work in the state; and
216	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
217	(I) rather than the deductible and out of pocket maximum based on income levels, the

218	deductible is \$750 and the out of pocket maximum is \$2,000;
219	(II) dental coverage is not required; and
220	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do no
221	apply; or
222	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
223	deductible that is either:
224	(I) the lowest deductible permitted for a federally qualified high deductible health plan
225	<u>or</u>
226	(II) a deductible that is higher than the lowest deductible permitted for a federally
227	qualified high deductible health plan, but includes an employer contribution to a health savings
228	account in a dollar amount at least equal to the dollar amount difference between the lowest
229	deductible permitted for a federally qualified high deductible plan and the deductible for the
230	employer offered federally qualified high deductible plan; and
231	(B) an out of pocket maximum that does not exceed three times the amount of the
232	annual deductible; and
233	(C) under which the employer pays 75% of the premium for the employee and the
234	dependents of the employee who work or reside in the state.
235	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
236	(2) Except as provided in Subsection (3), this section applies to all contracts entered
237	into by or delegated to the department or a division or board of the department on or after July
238	1, 2009, if:
239	(a) the contract is for design or construction; and
240	(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
241	(ii) a subcontract is in the amount of \$750,000 or greater.
242	(3) This section does not apply to contracts entered into by the department or a division
243	or board of the department if:
244	(a) the application of this section jeopardizes the receipt of federal funds;
245	(b) the contract or agreement is between:
246	(i) the department or a division or board of the department; and
247	(ii) (A) another agency of the state;
248	(B) the federal government;

240	(C) another state.
249	(C) another state;
250	(D) an interstate agency;
251	(E) a political subdivision of this state; or
252	(F) a political subdivision of another state;
253	(c) the executive director determines that applying the requirements of this section to a
254	particular contract interferes with the effective response to an immediate health and safety
255	threat from the environment; or
256	(d) the contract is:
257	(i) a sole source contract; or
258	(ii) an emergency procurement.
259	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
260	or a modification to a contract, when the contract does not meet the initial threshold required
261	by Subsection (2).
262	(b) A person who intentionally uses change orders or contract modifications to
263	circumvent the requirements of Subsection (2) is guilty of an infraction.
264	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
265	director that the contractor has and will maintain an offer of qualified health insurance
266	coverage for the contractor's employees and the employees' dependents during the duration of
267	the contract.
268	(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
269	demonstrate to the executive director that the subcontractor has and will maintain an offer of
270	qualified health insurance coverage for the subcontractor's employees and the employees'
271	dependents during the duration of the contract.
272	(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
273	of the contract is subject to penalties in accordance with administrative rules adopted by the
274	department under Subsection (6).
275	(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
276	requirements of Subsection (5)(b).
277	(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
278	the duration of the contract is subject to penalties in accordance with administrative rules

adopted by the department under Subsection (6).

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280	(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
281	requirements of Subsection (5)(a).
282	(6) The department shall adopt administrative rules:
283	(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
284	(b) in coordination with:
285	(i) a public transit district in accordance with Section 17B-2a-818.5;
286	(ii) the Department of Natural Resources in accordance with Section 79-2-404;
287	(iii) the State Building Board in accordance with Section 63A-5-205;
288	(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
289	(v) the Department of Transportation in accordance with Section 72-6-107.5; and
290	(vi) the Legislature's Administrative Rules Review Committee; and
291	(c) which establish:
292	(i) the requirements and procedures a contractor must follow to demonstrate to the
293	public transit district compliance with this section which shall include:
294	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
295	(b) more than twice in any 12-month period; and
296	(B) that the actuarially equivalent determination required in Subsection (1) is met by
297	the contractor if the contractor provides the department or division with a written statement of
298	actuarial equivalency from either:
299	(I) the Utah Insurance Department [or];
300	(II) an actuary selected by the contractor or the contractor's insurer; [and] or
301	(III) an underwriter who is responsible for developing the employer group's premium
302	rates;
303	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
304	violates the provisions of this section, which may include:
305	(A) a three-month suspension of the contractor or subcontractor from entering into
306	future contracts with the state upon the first violation;
307	(B) a six-month suspension of the contractor or subcontractor from entering into future
308	contracts with the state upon the second violation;
309	(C) an action for debarment of the contractor or subcontractor in accordance with
310	Section 63G-6-804 upon the third or subsequent violation; and

311	(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
312	of the amount necessary to purchase qualified health insurance coverage for an employee and
313	the dependents of an employee of the contractor or subcontractor who was not offered qualified
314	health insurance coverage during the duration of the contract[-]; and
315	(iii) a website on which the department shall post the benchmark for the qualified
316	health insurance coverage identified in Subsection (1)(c)(i).
317	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
318	subcontractor who intentionally violates the provisions of this section shall be liable to the
319	employee for health care costs [not covered by insurance.] that would have been covered by
320	qualified health insurance coverage.
321	(ii) An employer has an affirmative defense to a cause of action under Subsection
322	(7)(a) if the employer:
323	(A) relied in good faith on a written statement of actuarial equivalency provided by an
324	actuary; or
325	(B) if the department determines that compliance with this section is not required under
326	the provisions of Subsections (3) or (4).
327	(b) An employee has a private right of action only against the employee's employer to
328	enforce the provisions of this Subsection (7).
329	(8) Any penalties imposed and collected under this section shall be deposited into the
330	Medicaid Restricted Account created in Section 26-18-402.
331	(9) The failure of a contractor or subcontractor to provide qualified health insurance
332	<u>coverage</u> as required by this section:
333	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
334	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
335	Legal and Contractual Remedies; and
336	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
337	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
338	or construction.
339	Section 3. Section 31A-30-209 is enacted to read:
340	31A-30-209. State contract requirements Employer default plans.
341	(1) This section applies to an employer who is required to offer its employees a health

342	benefit plan as a condition of qualifying for a state contract under:
343	(a) Section 17B-2a-818.5;
344	(b) Section 19-1-206;
345	(c) Subsection 53A-5-205(3);
346	(d) Section 63C-9-403;
347	(e) Section 72-6-107.5; and
348	(f) Section 79-2-404.
349	(2) An employer described in Subsection (1) shall, when selecting the default plan
350	required in Section 31A-30-204, select a default plan that is "qualified health insurance
351	coverage" as defined in the sections listed in Subsections (1)(a) through (f).
352	Section 4. Section 63A-5-205 is amended to read:
353	63A-5-205. Contracting powers of director Retainage Health insurance
354	coverage.
355	(1) As used in this section:
356	(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
357	(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
358	(c) "Employee" means an "employee," "worker," or "operative" as defined in Section
359	34A-2-104 who:
360	(i) works at least 30 hours per calendar week; and
361	(ii) meets employer eligibility waiting requirements for health care insurance which
362	may not exceed the first day of the calendar month following 90 days from the date of hire.
363	(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
364	(e) "Qualified health insurance coverage" means [a health benefit plan that] at the time
365	the contract is entered into or renewed:
366	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
367	determined by the Children's Health Insurance Program under Section 26-40-106; and]
368	[(B) under which the employer pays at least 50% of the premium for the employee and
369	the dependents of the employee;]
370	[(ii) (A) is a federally qualified high deductible health plan that has:]
371	[(I) the lowest deductible permitted for a federally qualified high deductible health
372	plan; and]

373	[(II) an out of pocket maximum that does not exceed three times the amount of the
374	annual deductible; and]
375	[(B) under which the employer pays 75% of the premium for the employee and the
376	dependents of the employee; or]
377	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
378	determined under Subsection (1)(e)(i); and]
379	[(B) under which the employer pays at least 75% of the premium of the employee and
380	the dependents of the employee.]
381	(i) a health benefit plan and employer contribution level with a combined actuarial
382	value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
383	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
384	a contribution level of 50% of the premium for the employee and the dependents of the
385	employee who reside or work in the state, in which:
386	(A) the employer pays at least 50% of the premium for the employee and the
387	dependents of the employee who reside or work in the state; and
388	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
389	(I) rather than the deductible and out of pocket maximum based on income levels, the
390	deductible is \$750 and the out of pocket maximum is \$2,000;
391	(II) dental coverage is not required; and
392	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
393	apply; or
394	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
395	deductible that is either:
396	(I) the lowest deductible permitted for a federally qualified high deductible health plan;
397	<u>or</u>
398	(II) a deductible that is higher than the lowest deductible permitted for a federally
399	qualified high deductible health plan, but includes an employer contribution to a health savings
400	account in a dollar amount at least equal to the dollar amount difference between the lowest
401	deductible permitted for a federally qualified high deductible plan and the deductible for the
402	employer offered federally qualified high deductible plan; and
403	(B) an out of pocket maximum that does not exceed three times the amount of the

404	annual deductible; and
405	(C) under which the employer pays 75% of the premium for the employee and the
406	dependents of the employee who work or reside in the state.
407	(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
408	(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:
409	(a) subject to Subsection (3), enter into contracts for any work or professional services
410	which the division or the State Building Board may do or have done; and
411	(b) as a condition of any contract for architectural or engineering services, prohibit the
412	architect or engineer from retaining a sales or agent engineer for the necessary design work.
413	(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
414	contracts entered into by the division or the State Building Board on or after July 1, 2009, if:
415	(i) the contract is for design or construction; and
416	(ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or
417	(B) a subcontract is in the amount of \$750,000 or greater.
418	(b) This Subsection (3) does not apply:
419	(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
420	(ii) if the contract is a sole source contract;
421	(iii) if the contract is an emergency procurement; or
422	(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,
423	when the contract does not meet the threshold required by Subsection (3)(a).
424	(c) A person who intentionally uses change orders or contract modifications to
425	circumvent the requirements of Subsection (3)(a) is guilty of an infraction.
426	(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
427	the contractor has and will maintain an offer of qualified health insurance coverage for the
428	contractor's employees and the employees' dependents.
429	(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
430	shall demonstrate to the director that the subcontractor has and will maintain an offer of
431	qualified health insurance coverage for the subcontractor's employees and the employees'
432	dependents.
433	(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
434	during the duration of the contract is subject to penalties in accordance with administrative

435	rules adopted by the division under Subsection (3)(f).
436	(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
437	requirements of Subsection (3)(d)(ii).
438	(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
439	during the duration of the contract is subject to penalties in accordance with administrative
440	rules adopted by the division under Subsection (3)(f).
441	(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
442	requirements of Subsection (3)(d)(i).
443	(f) The division shall adopt administrative rules:
444	(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
445	(ii) in coordination with:
446	(A) the Department of Environmental Quality in accordance with Section 19-1-206;
447	(B) the Department of Natural Resources in accordance with Section 79-2-404;
448	(C) a public transit district in accordance with Section 17B-2a-818.5;
449	(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;
450	(E) the Department of Transportation in accordance with Section 72-6-107.5; and
451	(F) the Legislature's Administrative Rules Review Committee; and
452	(iii) which establish:
453	(A) the requirements and procedures a contractor must follow to demonstrate to the
454	director compliance with this Subsection (3) which shall include:
455	(I) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
456	(b) more than twice in any 12-month period; and
457	(II) that the actuarially equivalent determination required in Subsection (1) is met by
458	the contractor if the contractor provides the department or division with a written statement of
459	actuarial equivalency from either:
460	(Aa) the Utah Insurance Department [or];
461	(Bb) an actuary selected by the contractor or the contractor's insurer; [and] or
462	(Cc) an underwriter who is responsible for developing the employer group's premium
463	rates;
464	(B) the penalties that may be imposed if a contractor or subcontractor intentionally
465	violates the provisions of this Subsection (3), which may include:

466	(I) a three-month suspension of the contractor or subcontractor from entering into
467	future contracts with the state upon the first violation;
468	(II) a six-month suspension of the contractor or subcontractor from entering into future
469	contracts with the state upon the second violation;
470	(III) an action for debarment of the contractor or subcontractor in accordance with
471	Section 63G-6-804 upon the third or subsequent violation; and
472	(IV) monetary penalties which may not exceed 50% of the amount necessary to
473	purchase qualified health insurance coverage for an employee and the dependents of an
474	employee of the contractor or subcontractor who was not offered qualified health insurance
475	coverage during the duration of the contract[-]; and
476	(C) a website on which the department shall post the benchmark for the qualified
477	health insurance coverage identified in Subsection (1)(e)(i).
478	(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
479	subcontractor who intentionally violates the provisions of this section shall be liable to the
480	employee for health care costs [not covered by insurance.] that would have been covered by
481	qualified health insurance coverage.
482	(ii) An employer has an affirmative defense to a cause of action under Subsection (g)(i)
483	if the employer:
484	(A) relied in good faith on a written statement of actuarial equivalency provided by an
485	actuary; or
486	(B) if the department determines that compliance with this section is not required under
487	the provisions of Subsection (3)(b).
488	[(ii)] (iii) An employee has a private right of action only against the employee's
489	employer to enforce the provisions of this Subsection (3)(g).
490	(h) Any penalties imposed and collected under this section shall be deposited into the
491	Medicaid Restricted Account created by Section 26-18-402.
492	(i) The failure of a contractor or subcontractor to provide qualified health insurance
493	coverage as required by this section:
494	(i) may not be the basis for a protest or other action from a prospective bidder, offeror,
495	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
496	Legal and Contractual Remedies; and

197	(ii) may not be used by the procurement entity or a prospective bidder, offeror, or
198	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
199	or construction.
500	(4) The judgment of the director as to the responsibility and qualifications of a bidder
501	is conclusive, except in case of fraud or bad faith.
502	(5) The division shall make all payments to the contractor for completed work in
503	accordance with the contract and pay the interest specified in the contract on any payments that
504	are late.
505	(6) If any payment on a contract with a private contractor to do work for the division or
506	the State Building Board is retained or withheld, it shall be retained or withheld and released as
507	provided in Section 13-8-5.
808	Section 5. Section 63C-9-403 is amended to read:
509	63C-9-403. Contracting power of executive director Health insurance coverage
510	(1) For purposes of this section:
511	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
512	34A-2-104 who:
513	(i) works at least 30 hours per calendar week; and
514	(ii) meets employer eligibility waiting requirements for health care insurance which
515	may not exceed the first of the calendar month following 90 days from the date of hire.
516	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
517	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
518	the contract is entered into or renewed:
519	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
520	determined by the Children's Health Insurance Program under Section 26-40-106; and]
521	[(B) under which the employer pays at least 50% of the premium for the employee and
522	the dependents of the employee;]
523	[(ii) (A) is a federally qualified high deductible health plan that has:]
524	[(I) the lowest deductible permitted for a federally qualified high deductible health
525	plan; and]
526	[(II) an out of pocket maximum that does not exceed three times the amount of the
527	annual deductible; and]

528	(B) under which the employer pays 75% of the premium for the employee and the
529	dependents of the employee; or]
530	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
531	determined under Subsection (1)(e)(i); and]
532	[(B) under which the employer pays at least 75% of the premium of the employee and
533	the dependents of the employee.]
534	(i) a health benefit plan and employer contribution level with a combined actuarial
535	value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
536	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
537	a contribution level of 50% of the premium for the employee and the dependents of the
538	employee who reside or work in the state, in which:
539	(A) the employer pays at least 50% of the premium for the employee and the
540	dependents of the employee who reside or work in the state; and
541	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
542	(I) rather than the deductible and out of pocket maximum based on income levels, the
543	deductible is \$750 and the out of pocket maximum is \$2,000;
544	(II) dental coverage is not required; and
545	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
546	apply; or
547	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
548	deductible that is either:
549	(I) the lowest deductible permitted for a federally qualified high deductible health plan;
550	<u>or</u>
551	(II) a deductible that is higher than the lowest deductible permitted for a federally
552	qualified high deductible health plan, but includes an employer contribution to a health savings
553	account in a dollar amount at least equal to the dollar amount difference between the lowest
554	deductible permitted for a federally qualified high deductible plan and the deductible for the
555	employer offered federally qualified high deductible plan; and
556	(B) an out of pocket maximum that does not exceed three times the amount of the
557	annual deductible; and
558	(C) under which the employer pays 75% of the premium for the employee and the

559 dependents of the employee who work or reside in the state. 560 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208. 561 (2) Except as provided in Subsection (3), this section applies to all contracts entered 562 into by the board or on behalf of the board on or after July 1, 2009, if: 563 (a) the contract is for design or construction; and 564 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or 565 (ii) a subcontract is in the amount of \$750,000 or greater. 566 (3) This section does not apply if: 567 (a) the application of this section jeopardizes the receipt of federal funds: 568 (b) the contract is a sole source contract; or 569 (c) the contract is an emergency procurement. 570 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102, 571 or a modification to a contract, when the contract does not meet the initial threshold required 572 by Subsection (2). (b) A person who intentionally uses change orders or contract modifications to 573 574 circumvent the requirements of Subsection (2) is guilty of an infraction. 575 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive 576 director that the contractor has and will maintain an offer of qualified health insurance 577 coverage for the contractor's employees and the employees' dependents during the duration of 578 the contract. 579 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor 580 shall demonstrate to the executive director that the subcontractor has and will maintain an offer 581 of qualified health insurance coverage for the subcontractor's employees and the employees' 582 dependents during the duration of the contract. 583 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during 584 the duration of the contract is subject to penalties in accordance with administrative rules 585 adopted by the division under Subsection (6). 586 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the 587 requirements of Subsection (5)(b).

the duration of the contract is subject to penalties in accordance with administrative rules

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

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90	adopted by the department under Subsection (b).
591	(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
592	requirements of Subsection (5)(a).
593	(6) The department shall adopt administrative rules:
594	(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
595	(b) in coordination with:
596	(i) the Department of Environmental Quality in accordance with Section 19-1-206;
597	(ii) the Department of Natural Resources in accordance with Section 79-2-404;
598	(iii) the State Building Board in accordance with Section 63A-5-205;
599	(iv) a public transit district in accordance with Section 17B-2a-818.5;
500	(v) the Department of Transportation in accordance with Section 72-6-107.5; and
501	(vi) the Legislature's Administrative Rules Review Committee; and
502	(c) which establish:
503	(i) the requirements and procedures a contractor must follow to demonstrate to the
604	executive director compliance with this section which shall include:
505	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
606	(b) more than twice in any 12-month period; and
507	(B) that the actuarially equivalent determination required in Subsection (1) is met by
608	the contractor if the contractor provides the department or division with a written statement of
509	actuarial equivalency from either:
510	(I) the Utah Insurance Department [or];
511	(II) an actuary selected by the contractor or the contractor's insurer; $[and]$ or
512	(III) an underwriter who is responsible for developing the employer group's premium
513	rates;
614	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
615	violates the provisions of this section, which may include:
616	(A) a three-month suspension of the contractor or subcontractor from entering into
517	future contracts with the state upon the first violation;
618	(B) a six-month suspension of the contractor or subcontractor from entering into future
519	contracts with the state upon the second violation;
520	(C) an action for debarment of the contractor or subcontractor in accordance with

621	Section 63G-6-804 upon the third or subsequent violation; and
622	(D) monetary penalties which may not exceed 50% of the amount necessary to
623	purchase qualified health insurance coverage for employees and dependents of employees of
624	the contractor or subcontractor who were not offered qualified health insurance coverage
625	during the duration of the contract[-]; and
626	(iii) a website on which the department shall post the benchmark for the qualified
627	health insurance coverage identified in Subsection (1)(c)(i).
628	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
629	subcontractor who intentionally violates the provisions of this section shall be liable to the
630	employee for health care costs [not covered by insurance.] that would have been covered by
631	qualified health insurance coverage.
632	(ii) An employer has an affirmative defense to a cause of action under Subsection
633	(7)(a) if the employer:
634	(A) relied in good faith on a written statement of actuarial equivalency provided by an
635	actuary; or
636	(B) if the department determines that compliance with this section is not required under
637	the provisions of Subsections (3) or (4).
638	(b) An employee has a private right of action only against the employee's employer to
639	enforce the provisions of this Subsection (7).
640	(8) Any penalties imposed and collected under this section shall be deposited into the
641	Medicaid Restricted Account created in Section 26-18-402.
642	(9) The failure of a contractor or subcontractor to provide qualified health insurance
643	coverage as required by this section:
644	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
645	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
646	Legal and Contractual Remedies; and
647	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
648	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
649	or construction.
650	Section 6. Section 72-6-107.5 is amended to read:
651	72-6-107.5. Construction of improvements of highway Contracts Health

52	insurance coverage.
553	(1) For purposes of this section:
554	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
555	34A-2-104 who:
556	(i) works at least 30 hours per calendar week; and
557	(ii) meets employer eligibility waiting requirements for health care insurance which
558	may not exceed the first day of the calendar month following 90 days from the date of hire.
559	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
660	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
661	the contract is entered into or renewed:
662	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
663	determined by the Children's Health Insurance Program under Section 26-40-106; and]
664	[(B) under which the employer pays at least 50% of the premium for the employee and
665	the dependents of the employee;]
666	[(ii) (A) is a federally qualified high deductible health plan that has:]
667	[(I) the lowest deductible permitted for a federally qualified high deductible health
668	plan; and]
669	[(II) an out of pocket maximum that does not exceed three times the amount of the
570	annual deductible; and]
571	[(B) under which the employer pays 75% of the premium for the employee and the
572	dependents of the employee; or]
573	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
574	determined under Subsection (1)(c)(i); and]
575	[(B) under which the employer pays at least 75% of the premium of the employee and
576	the dependents of the employee.]
577	(i) a health benefit plan and employer contribution level with a combined actuarial
578	value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
579	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
580	a contribution level of 50% of the premium for the employee and the dependents of the
581	employee who reside or work in the state, in which:
582	(A) the employer pays at least 50% of the premium for the employee and the

583	dependents of the employee who reside or work in the state; and
684	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
585	(I) rather than the deductible and out of pocket maximum based on income levels, the
686	deductible is \$750 and the out of pocket maximum is \$2,000;
687	(II) dental coverage is not required; and
688	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do no
689	apply; or
590	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
691	deductible that is either:
592	(I) the lowest deductible permitted for a federally qualified high deductible health plan
593	<u>or</u>
594	(II) a deductible that is higher than the lowest deductible permitted for a federally
595	qualified high deductible health plan, but includes an employer contribution to a health savings
696	account in a dollar amount at least equal to the dollar amount difference between the lowest
597	deductible permitted for a federally qualified high deductible plan and the deductible for the
598	employer offered federally qualified high deductible plan; and
599	(B) an out of pocket maximum that does not exceed three times the amount of the
700	annual deductible; and
701	(C) under which the employer pays 75% of the premium for the employee and the
702	dependents of the employee who work or reside in the state.
703	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
704	(2) Except as provided in Subsection (3), this section applies to all contracts entered
705	into by the department on or after July 1, 2009, for construction or design of highways if:
706	(a) the prime contract is in the amount of \$1,500,000 or greater; or
707	(b) a subcontract is in the amount of \$750,000 or greater.
708	(3) This section does not apply if:
709	(a) the application of this section jeopardizes the receipt of federal funds;
710	(b) the contract is a sole source contract; or
711	(c) the contract is an emergency procurement.
712	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
713	or a modification to a contract, when the contract does not meet the initial threshold required

714 by Subsection (2).

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- 715 (b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.
 - (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.
 - (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.
 - (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
 - (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
 - (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- 732 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
- 734 (6) The department shall adopt administrative rules:
- 735 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 736 (b) in coordination with:
- 737 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 738 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 739 (iii) the State Building Board in accordance with Section 63A-5-205;
- 740 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 741 (v) a public transit district in accordance with Section 17B-2a-818.5; and
- 742 (vi) the Legislature's Administrative Rules Review Committee; and
- 743 (c) which establish:
- 744 (i) the requirements and procedures a contractor must follow to demonstrate to the

/45	department compliance with this section which shall include:
746	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
747	(b) more than twice in any 12-month period; and
748	(B) that the actuarially equivalent determination required in Subsection (1) is met by
749	the contractor if the contractor provides the department or division with a written statement of
750	actuarial equivalency from either:
751	(I) the Utah Insurance Department [or];
752	(II) an actuary selected by the contractor or the contractor's insurer; $[and]$ or
753	(III) an underwriter who is responsible for developing the employer group's premium
754	rates;
755	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
756	violates the provisions of this section, which may include:
757	(A) a three-month suspension of the contractor or subcontractor from entering into
758	future contracts with the state upon the first violation;
759	(B) a six-month suspension of the contractor or subcontractor from entering into future
760	contracts with the state upon the second violation;
761	(C) an action for debarment of the contractor or subcontractor in accordance with
762	Section 63G-6-804 upon the third or subsequent violation; and
763	(D) monetary penalties which may not exceed 50% of the amount necessary to
764	purchase qualified health insurance coverage for an employee and a dependent of the employee
765	of the contractor or subcontractor who was not offered qualified health insurance coverage
766	during the duration of the contract[-]; and
767	(iii) a website on which th department shall post the benchmark for the qualified health
768	insurance coverage identified in Subsection (1)(c)(i).
769	(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
770	subcontractor who intentionally violates the provisions of this section shall be liable to the
771	employee for health care costs [not covered by insurance.] that would have been covered by
772	qualified health insurance coverage.
773	(ii) An employer has an affirmative defense to a cause of action under Subsection
774	(7)(a) if the employer:
775	(A) relied in good faith on a written statement of actuarial equivalency provided by an

776	actuary; or
777	(B) if the department determines that compliance with this section is not required under
778	the provisions of Subsections (3) or (4).
779	(b) An employee has a private right of action only against the employee's employer to
780	enforce the provisions of this Subsection (7).
781	(8) Any penalties imposed and collected under this section shall be deposited into the
782	Medicaid Restricted Account created in Section 26-18-402.
783	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
784	coverage as required by this section:
785	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
786	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
787	Legal and Contractual Remedies; and
788	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
789	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
790	or construction.
791	Section 7. Section 79-2-404 is amended to read:
792	79-2-404. Contracting powers of department Health insurance coverage.
793	(1) For purposes of this section:
794	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
795	34A-2-104 who:
796	(i) works at least 30 hours per calendar week; and
797	(ii) meets employer eligibility waiting requirements for health care insurance which
798	may not exceed the first day of the calendar month following 90 days from the date of hire.
799	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
800	(c) "Qualified health insurance coverage" means a [health benefit plan that] at the time
801	the contract is entered into or renewed:
802	[(i) (A) provides coverage that is actuarially equivalent to the current benefit plan
803	determined by the Children's Health Insurance Program under Section 26-40-106; and]
804	[(B) under which the employer pays at least 50% of the premium for the employee and
805	the dependents of the employee;]
806	[(ii) (A) is a federally qualified high deductible health plan that has:]

307	(I) the lowest deductible permitted for a federally qualified high deductible health
808	plan; and]
309	[(II) an out of pocket maximum that does not exceed three times the amount of the
310	annual deductible; and]
311	[(B) under which the employer pays 75% of the premium for the employee and the
312	dependents of the employee; or]
313	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
314	determined under Subsection (1)(c)(i); and]
315	[(B) under which the employer pays at least 75% of the premium of the employee and
316	the dependents of the employee.]
317	(i) a health benefit plan and employer contribution level with a combined actuarial
318	value at least actuarially equivalent to the combined actuarial value of the Benchmark Plan
319	determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
320	a contribution level of 50% of the premium for the employee and the dependents of the
321	employee who reside or work in the state, in which:
322	(A) the employer pays at least 50% of the premium for the employee and the
323	dependents of the employee who reside or work in the state; and
324	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
325	(I) rather than the deductible and out of pocket maximum based on income levels, the
326	deductible is \$750 and the out of pocket maximum is \$2,000;
327	(II) dental coverage is not required; and
328	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
329	apply; or
330	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
331	deductible that is either:
332	(I) the lowest deductible permitted for a federally qualified high deductible health plan;
333	<u>or</u>
334	(II) a deductible that is higher than the lowest deductible permitted for a federally
335	qualified high deductible health plan, but includes an employer contribution to a health savings
336	account in a dollar amount at least equal to the dollar amount difference between the lowest
337	deductible permitted for a federally qualified high deductible plan and the deductible for the

838	employer offered federally qualified high deductible plan; and
839	(B) an out of pocket maximum that does not exceed three times the amount of the
840	annual deductible; and
841	(C) under which the employer pays 75% of the premium for the employee and the
842	dependents of the employee who work or reside in the state.
843	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
844	(2) Except as provided in Subsection (3), this section applies to all contracts entered
845	into by, or delegated to, the department or a division, board, or council of the department on or
846	after July 1, 2009, if:
847	(a) the contract is for design or construction; and
848	(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
849	(ii) a subcontract is in the amount of \$750,000 or greater.
850	(3) This section does not apply to contracts entered into by the department or a
851	division, board, or council of the department if:
852	(a) the application of this section jeopardizes the receipt of federal funds;
853	(b) the contract or agreement is between:
854	(i) the department or a division, board, or council of the department; and
855	(ii) (A) another agency of the state;
856	(B) the federal government;
857	(C) another state;
858	(D) an interstate agency;
859	(E) a political subdivision of this state; or
860	(F) a political subdivision of another state; or
861	(c) the contract or agreement is:
862	(i) for the purpose of disbursing grants or loans authorized by statute;
863	(ii) a sole source contract; or
864	(iii) an emergency procurement.
865	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
866	or a modification to a contract, when the contract does not meet the initial threshold required
867	by Subsection (2).
868	(b) A person who intentionally uses change orders or contract modifications to

circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

- (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.
- (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
 - (6) The department shall adopt administrative rules:
 - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (b) in coordination with:

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- (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 891 (ii) a public transit district in accordance with Section 17B-2a-818.5:
- 892 (iii) the State Building Board in accordance with Section 63A-5-205;
- (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- (vi) the Legislature's Administrative Rules Review Committee; and
- 896 (c) which establish:
- (i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department which shall include:
- (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

900	(b) more than twice in any 12-month period; and
901	(B) that the actuarially equivalent determination required in Subsection (1) is met by
902	the contractor if the contractor provides the department or division with a written statement of
903	actuarial equivalency from either:
904	(I) the Utah Insurance Department [or];
905	(II) an actuary selected by the contractor or the contractor's insurer; [and] or
906	(III) an underwriter who is responsible for developing the employer group's premium
907	rates;
908	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
909	violates the provisions of this section, which may include:
910	(A) a three-month suspension of the contractor or subcontractor from entering into
911	future contracts with the state upon the first violation;
912	(B) a six-month suspension of the contractor or subcontractor from entering into future
913	contracts with the state upon the second violation;
914	(C) an action for debarment of the contractor or subcontractor in accordance with
915	Section 63G-6-804 upon the third or subsequent violation; [and]
916	(D) monetary penalties which may not exceed 50% of the amount necessary to
917	purchase qualified health insurance coverage for an employee and a dependent of an employee
918	of the contractor or subcontractor who was not offered qualified health insurance coverage
919	during the duration of the contract[-]; and
920	(iii) a website on which the department shall post the benchmark for the qualified
921	health insurance coverage identified in Subsection (1)(c)(i).
922	(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
923	subcontractor who <u>intentionally</u> violates the provisions of this section shall be liable to the
924	employee for health care costs [not covered by insurance.] that would have been covered by
925	qualified health insurance coverage.
926	(ii) An employer has an affirmative defense to a cause of action under Subsection
927	(7)(a) if the employer:
928	(A) relied in good faith on a written statement of actuarial equivalency provided by an
929	actuary; or
930	(B) if the department determines that compliance with this section is not required under

931	the provisions of Subsections (3) or (4).
932	(b) An employee has a private right of action only against the employee's employer to
933	enforce the provisions of this Subsection (7).
934	(8) Any penalties imposed and collected under this section shall be deposited into the
935	Medicaid Restricted Account created in Section 26-18-402.
936	(9) The failure of a contractor or subcontractor to provide qualified health insurance
937	<u>coverage</u> as required by this section:
938	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
939	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
940	Legal and Contractual Remedies; and
941	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
942	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
943	or construction.

Legislative Review Note as of 11-19-09 9:53 AM

Office of Legislative Research and General Counsel

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